

# **Exhibit A**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE PARTS                      Case No. 12-2311  
ANTITRUST LITIGATION                      Hon. Marianne O. Battani

ALL PARTS

THIS RELATES TO:

ALL AUTO PARTS CASES

MOTION TO COMPEL DISCOVERY FROM  
NON-PARTY ORIGINAL EQUIPMENT MANUFACTURERS

BEFORE SPECIAL MASTER GENE ESSHAKI  
Theodore Levin United States Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan  
Thursday, March 24, 2016

*To obtain a copy of this official transcript, contact:*  
*Robert L. Smith, Official Court Reporter*  
*(313) 964-3303 • rob\_smith@mied.uscourts.gov*

1 APPEARANCES:

2 For the Plaintiffs: STEVEN N. WILLIAMS  
COTCHETT, PITRE & MCCARTHY, L.L.P.

3 VICTORIA ROMANENKO  
4 CUNEO, GILBERT & LaDUCA, L.L.P.

5 For the Defendants: PATRICK J. CAROME  
6 WILMER, CUTLER, PICKERING, HALE and  
DORR, L.L.P.

7 STEVEN F. CHERRY  
8 WILMER, CUTLER, PICKERING, HALE and  
DORR, L.L.P.

9 DANIEL T. FENSKE  
10 JENNER & BLOCK

11 For the Non-Party ADAM C. HEMLOCK  
12 Original Equipment WEIL, GOTSHAL & MANGES, L.L.P.  
Manufacturers:

13 ADAM WOLFSON  
14 JOSEPH R. ASHBY  
DOMINIC SURPRENANT  
QUINN, EMANUEL, URQUHART, OLIVER &  
15 SULLIVAN, L.L.P.

16 COLIN R. KASS  
PROSKAUER ROSE, L.L.P.

17 DANIEL S. SAVRIN,  
18 MORGAN LEWIS

19 ROBERT J. TUCKER  
BAKER HOSTETLER

20 JUSTINA K. SESSIONS  
21 KEKER & VAN NEST, L.L.P.

22 MEREDITH JONES KINGSLEY  
23 ALSTON & BIRD, L.L.P.

24 (Please note, appearances of attorneys listed are only those  
25 that presented argument before the Special Master.)

TABLE OF CONTENTS

<u>MATTER</u>	<u>PAGE</u>
Argument on the Motion to Compel Discovery	
by Mr. Wolfson.....	5
by Mr. Hemlock.....	17
by Mr. Kass.....	23
by Mr. Savrin.....	25
by Mr. Tucker.....	32
by Mr. Surprenant.....	35
by Mr. Ashby.....	40
by Ms. Sessions.....	40
Ruling by the Special Master.....	41

1 Detroit, Michigan

2 Thursday, March 24, 2016

3 at about 3:15 p.m.

4 — — —

5 (Special Master and Counsel present.)

6 SPECIAL MASTER: It is now 3:15. We have been in  
7 discussions since approximately 9:30 trying to reach a  
8 resolution of some of the issues in the pending motions, and  
9 it is my hope that we will have a partial resolution shortly  
10 which will permit me to adjourn the majority of the motions.

11 However, there is one matter that is going to  
12 require a hearing, and that is with respect to the document  
13 requests served by the serving parties on the OEMs concerning  
14 the production of documents that the OEMs made to the  
15 Department of Justice. And as I understand the request now,  
16 it is that the OEMs produce any documents they produced to  
17 the Department of Justice in any case that is not subject to  
18 the stay. Some of those cases I understand are, in fact,  
19 within this case and they are still stayed, some of them are  
20 not in this case and are stayed. That also excluded would be  
21 any communications between the OEMs and the Department of  
22 Justice in which the Department of Justice was asking for  
23 analyses or projections or assistance in understanding the  
24 data that had been produced by the OEMs to the DOJ, that  
25 would be excluded as well.

1 Mr. Williams, have I hit everything there?

2 MR. WILLIAMS: I believe you have, Your Honor.

3 SPECIAL MASTER: Sir, it is your motion so would  
4 you like to start? Please let's try to keep it to five or  
5 ten minutes.

6 MR. WILLIAMS: Well, I will be very brief. I will  
7 try to start -- to be honest --

8 SPECIAL MASTER: I have read everything.

9 MR. WILLIAMS: -- I'm not quite sure what the  
10 position of General Motors is, I will need to hear from them  
11 to respond very briefly afterward, but --

12 SPECIAL MASTER: Mr. Williams, I suggest you sit  
13 and we'll have General Motors tell us their position.

14 MR. WILLIAMS: Very well.

15 SPECIAL MASTER: I have read your brief  
16 extensively, I have notes of it and everything.

17 MR. WILLIAMS: Thank you.

18 SPECIAL MASTER: Counsel, would you identify  
19 yourself?

20 MR. WOLFSON: Yes, Special Master. My name is  
21 Adam Wolfson, I'm from Quinn, Emanuel, Urquhart & Sullivan on  
22 behalf of General Motors.

23 SPECIAL MASTER: All right.

24 MR. WOLFSON: Special Master, the issue here is  
25 that as we understand the serving parties' position is, well,

1 the OEMs have collected these documents already so they  
2 should just be able to produce it to us. Well, the problem  
3 is that third-party subpoenas you don't just waive burden,  
4 you look at substantial need, you look at relevance, you look  
5 at confidentiality of the materials, whether they are highly  
6 confidential, all of these play into the final decision of  
7 whether to produce.

8 When producing to the Government, they are the good  
9 guys, they are the ones trying to prosecute all of these  
10 parts suppliers for their collusion against the OEMs, the  
11 OEMs are going to be more willing to provide certain  
12 highly-confidential information to the Government than they  
13 otherwise might be willing to produce to the parties in this  
14 case, and that's exactly what happened.

15 One major concern is that there is  
16 highly-confidential information in these materials that  
17 frankly the OEMs do not want to produce, when coupled with  
18 that the plaintiffs or the serving parties have not  
19 demonstrated that they absolutely need this information.

20 Now, they have the DOJ productions from the  
21 defendants. They have all of the documents that these  
22 defendants who are the admitted or accused conspirators,  
23 these documents establish their liability. So to the extent  
24 that additional documents were needed by the DOJ to prove  
25 liability, to establish criminal liability, which is beyond a

1 reasonable doubt, and the OEMs helped with that process, that  
2 shouldn't be used against them in saying now, okay, you have  
3 to give all of that over to us simply because we are in civil  
4 litigation.

5 Rule 45 is clear, if there is a not a substantial  
6 need, if it is highly confidential, if it is marginally  
7 relevant, and that weighs against production here and that's  
8 why there is a serious concern on the part of the OEMs like  
9 GM that have produced a fair amount of documents to the DOJ.

10 A wholesale production is going to create perverse  
11 incentives for victims of conspiracies like this when there  
12 are defendants that are more reticent to settle with the DOJ  
13 or to admit their guilt and DOJ has to go out to the victims  
14 and produce -- have them produce additional documents to help  
15 establish that liability, those victims are going to be more  
16 hesitant to do so if they know that their crown jewels, that  
17 their highly-confidential documents are automatically going  
18 to have to be produced to parties in other litigation.

19 We submit because there has not been a showing of  
20 substantial need on this motion and because there are such  
21 voluminous other DOJ productions from the actual wrongdoers,  
22 a wholesale production here even with the limitations, not  
23 subject to stay, no communication with DOJ. I understand  
24 that there was also something about ongoing investigations of  
25 the DOJ not necessarily being produced, I may be wrong on



1       that.

2               SPECIAL MASTER: No, that's correct.

3               MR. WOLFSON: Okay.

4               SPECIAL MASTER: There was a -- I didn't mention  
5 though but there was a request for it to be a springing order  
6 so that in the future if a -- if the stay is lifted as to any  
7 particular part or part case, that without having to come  
8 back here the moving parties could obtain that data if I rule  
9 that they are entitled to that data.

10              MR. WOLFSON: Well, I think in the context here is  
11 what we have is the OEMs have offered to produce some  
12 documents as a compromise. They have offered to produce  
13 documents to the extent that they were produced to the DOJ  
14 would not be withheld on the fact that they were produced to  
15 the DOJ. We have offered to produce certain transactional  
16 data related to non-defendant suppliers. We have offered to  
17 produce reasonably accessible information about MSRPs. We  
18 think that that is sort of the specifically tailored request  
19 and specifically tailored production that is called for by  
20 Rule 45 and that is appropriate in this case particularly  
21 given that the OEMs are the primary direct victims that the  
22 DOJ was consulting merely because they are trying to  
23 establish liability of the actual wrongdoers.

24              SPECIAL MASTER: Counsel, thank you very much.

25              MR. WOLFSON: So that's our position.

1           SPECIAL MASTER: That's a good argument on such  
2 short notice.

3           MR. WOLFSON: Thank you.

4           SPECIAL MASTER: Mr. Williams?

5           MR. WILLIAMS: Thank you, Your Honor. I will try  
6 to be brief.

7           It was a good argument on short notice but it is  
8 not the argument that was in the opposition brief, so I would  
9 suggest that argument was waived, none of that was in their  
10 brief on the specific points. If you look at pages 34 and 35  
11 of the brief that GM signed on to you are not going to find  
12 any of those arguments.

13           Now, it is instructive to look at footnote 33 where  
14 they say to the extent that protection -- further production  
15 is required it should be limited to ordinary course documents  
16 and not communications, witness statements, summaries or  
17 other materials prepared specifically for any DOJ Grand Jury  
18 investigation.

19           So as you said at the outset, we are not seeking  
20 their communications with the DOJ other than the pulls from  
21 transactional data that the Department of Justice has told us  
22 they are fine with us having. We are not seeking specially  
23 prepared documents and we are not seeking witness statements,  
24 but you have not been provided any reason to deny production.

25           And I note among the very first orders

1 Judge Battani made in that case was that productions to the  
2 DOJ would be given to the parties, and there is no reason  
3 here to be different. We don't have to show, quote, absolute  
4 need. We have a protective order in place, and there has  
5 been no identification of how that protective order is  
6 lacking or inadequate to protect the crown jewels. And these  
7 materials were produced to the department, they are not  
8 privileged; they are compared, they have been gathered, have  
9 been produced.

10 Case after case permits the production to civil  
11 parties with very, very limited exceptions that I just talked  
12 about from footnote 33 of documents in civil litigation that  
13 were previously produced to a government entity.

14 These are core documents to us because we need to  
15 go through the chain of distribution from defendants to OEMs  
16 until the parts get to us. This is a necessary part of that  
17 chain, and in the discussion of burden that was just made it  
18 seems this is less burdensome. I mean, they had a compromise  
19 to give us a subset of it but what we are saying is just give  
20 us what you have already compiled. They have not identified  
21 any privileged, they have just identified a policy reason  
22 that perhaps in the future victims of crimes would be less  
23 willing to cooperate with the government if they thought in  
24 future civil litigation such productions may be necessary.

25 That position has been rejected by courts. There

1 is no such privilege like that, and otherwise these documents  
2 are in the core of discoverable information in this case.  
3 And the DOJ are good guys but we would like to think we are  
4 good guys too. We represent the class in this case. We have  
5 class cert dates coming. We are here on a motion to compel  
6 today after seven and-a-half months of meeting and  
7 conferring, and to carve out one set of non-privileged  
8 relevant documents that are sitting on a drive and could be  
9 given to us in one week requires more of a showing than  
10 perhaps in the future a crime victim won't cooperate with the  
11 government if you permit us to have these documents here.  
12 Thank you.

13 SPECIAL MASTER: Would you agree -- I don't  
14 remember the precise terms of the protective order, but would  
15 you agree with an attorney-eyes-only designation?

16 MR. WILLIAMS: Certainly, we have no concern about  
17 that.

18 SPECIAL MASTER: Okay.

19 MR. WILLIAMS: And if our understanding is that the  
20 concern is about not necessarily the parties having it but  
21 competitors having it, we would be willing to confer with  
22 General Motors about that concern as well.

23 SPECIAL MASTER: Could you explain that a little  
24 further?

25 MR. WILLIAMS: I don't want to speak for

1 General Motors but I have an impression that their concern is  
2 not as heightened as to me seeing it or counsel for  
3 defendants seeing it, as much as it is another automaker  
4 seeing this information. There is only one other automaker  
5 in this litigation, they are only in one case, and it would  
6 seem that if that is really the core of the concern of the  
7 confidential that there ought to be a way to address that  
8 concern.

9 SPECIAL MASTER: Okay.

10 MR. WILLIAMS: Thank you.

11 MR. WOLFSON: May I respond?

12 SPECIAL MASTER: Yes, please do.

13 MR. WOLFSON: Thank you, Special Master.

14 A couple points. The point that Counsel just  
15 raised about only being focused on Ford, that is -- that's  
16 incorrect. Their worry is that this is highly-sensitive  
17 competitive but also just highly-confidential internal  
18 information that will be going to parts suppliers, it will be  
19 going to downstream purchasers, it will be in the hands of  
20 dozens of law firms, that will be in the hands of even  
21 more -- by multiple more attorneys. This is all the sorts of  
22 information where unless there is really a substantial need  
23 for it, and I say substantial because that's actually the  
24 words that are in the rule, not absolute, substantial need,  
25 the -- if there has been no showing of substantial need then

1     having such confidential information placed into this  
2     litigation where we are a non-party and do not participate in  
3     the hearings, do not participate in the trial, do not  
4     participate in negotiations between the parties that will be  
5     using this information, that's where the concern arises, not  
6     because Ford is one of the litigants in one of the cases.

7             To the extent that Mr. Williams talked about this  
8     chain of distribution, we don't understand how the compromise  
9     that we have offered fails to satisfy that. There is the  
10    MSRP data that we have offered to produce, there is the  
11    costing data from -- the transactional data from  
12    non-defendant suppliers, but the rest is all information that  
13    should have been produced to the best of the parties'  
14    abilities in this case and therefore we don't see the  
15    equivalence of saying well, the DOJ production helps us track  
16    the chain of distribution on down to the end payors.

17            I believe that is -- one minor point. In our  
18    briefs we did argue that the -- besides the documents that we  
19    have provided, none are relevant and necessary and that's  
20    what I'm arguing now, that it is not relevant or necessary to  
21    produce them but it is a minor point. Those are the issues I  
22    would like to raise.

23            SPECIAL MASTER: Thank you. Ms. Romanenko, did you  
24    have something you wanted to address?

25            MS. ROMANENKO: Your Honor, just quickly, we wanted

1 to verify that attorneys' eyes only includes our experts?

2 SPECIAL MASTER: Yes.

3 MS. ROMANENKO: Thank you.

4 SPECIAL MASTER: Yes. I'm going to -- I'm going to  
5 rule that the productions by the OEM to the Department of  
6 Justice have to be produced. They -- every day in this  
7 country major cases are litigated in which  
8 highly-confidential competitive information is exchanged  
9 under protective orders, and I understand the significance of  
10 this but protective orders are designed exactly to prevent  
11 leaking of that information, so I don't accept that as  
12 argument for not producing the information. I do think it is  
13 relevant, it may also lead to relevant information.

14 I am going to order that it be produced. I'm  
15 asking Mr. Williams to draft the order with the exclusions  
16 that we talked about. The ones that you've quoted to me in  
17 the footnote, the ones that exclude any information on an  
18 ongoing investigation, whether that case is within this case  
19 or outside of it, and that it be a springing order so that at  
20 any time down the road when Judge Battani lifts the stay as  
21 to any other part or case that is currently subject to the  
22 stay it will automatically permit the moving parties to seek  
23 that DOJ production from the original equipment  
24 manufacturers. And I would like that information to be  
25 produced within seven days after entry of the order.

1           Now, Mr. Williams, as always you have to include in  
2     the body of the order -- at the end of the order that it is  
3     pursuant to the order appointing me Special Master, and it is  
4     subject to review and appeal to Judge Battani.

5           MR. WILLIAMS:   Yes.

6           SPECIAL MASTER:   Understood?

7           MR. WILLIAMS:   Thank you, Your Honor.

8           SPECIAL MASTER:   That's all we have for now.

9           (Court recessed at 3:31 p.m.)

10                               -   -   -

11           (Court reconvened at 3:48 p.m.; Special Master and,  
12     counsel present.)

13           SPECIAL MASTER:   All right.   We are on the record  
14     at this point, and we are addressing the pending motion to  
15     enforce the subpoena that was addressed to the OEMs by the  
16     moving parties.

17           I have started -- I started conferencing with the  
18     moving parties and the OEMs at approximately 9:30 this  
19     morning, it is now ten minutes to 4:00.   After several hours  
20     of discussions individually and jointly I reached the  
21     conclusion that there simply isn't sufficient information  
22     before me today to make a reasonable decision on to --  
23     whether to enforce or not to enforce, to what extent to  
24     enforce the subpoena.

25           As a consequence, I suggested to the moving parties



1 the best course of conduct -- and to the OEMs, that the best  
2 course of conduct would be to conduct some 30(b)(6)  
3 depositions of the OEMs in order to better understand what  
4 information is available, reasonably accessible, and the  
5 costs and burden that would be incurred in having to generate  
6 that information. With this information in hand it would be  
7 easy then -- not easy, but it will be easier to assess  
8 arguments on proportionality, arguments on burden, and so  
9 forth.

10 So I have asked the moving parties to come up with  
11 a proposal for dealing with taking 30(b)(6) depositions of  
12 the OEMs, and adjourning this motion until those depositions  
13 have been concluded and the parties -- all the parties,  
14 including the OEMs, have had an opportunity to confer and in  
15 an attempt to revise down the subpoena because at that point  
16 they will know that certain information, such as pricing on a  
17 VIN level, is simply not available, and so to ask for it is a  
18 nullity.

19 So with that in mind, I ask that the moving parties  
20 confer and come up with a proposal for conducting these  
21 30(b)(6) depositions, including who they want to depose, a  
22 list of areas where the OEMs can designate the 30(b)(6)  
23 representative to be deposed. When I say who I meant which  
24 of the OEMs, including truck and equipment distributors,  
25 small entities and non-core. And at this point I would like

1 the moving parties to tell me what they have come up with.

2 MR. HEMLOCK: Thank you, Your Honor. Adam Hemlock  
3 from Weil, Gotshal & Manges on behalf of the Bridgestone and  
4 Calsonic defendants.

5 Your Honor, the moving parties have conferred and  
6 came up with a list of five topics which I will read out for  
7 the record right now. These would be the 30(b)(6) topics  
8 that would form the basis of the depositions of the OEM  
9 family.

10 Number one would be transactional purchase data for  
11 the parts at issue. Number two, procurement process and  
12 supplier selection and price adjustments for the parts at  
13 issue, and documents related thereto. Number three, vehicle  
14 cost data and other information. Number four, vehicle  
15 pricing process including process for setting and adjusting  
16 pricing, and documents related thereto. Number five,  
17 transactional sales data for sales of vehicles, and then  
18 there are four subparts. A, from OEMs to ADPs and TEDPs;  
19 B, from OEMs to distributors; C, from distributors to ADPs  
20 and TEDPs; and D, from ADPs and TEDPs to EPPs.

21 And then one last note, references above to  
22 documents and data include information on format, where  
23 maintained, time period, current and legacy systems, and  
24 costs and burden of production. So that would be -- those  
25 would be the topics for the notice.

1           SPECIAL MASTER: Understood. And in the interest  
2 of saving time, could you e-mail those to counsel for the  
3 OEMs.

4           And then the next point that I have is who do you  
5 want to take 30(b)(6) depositions of? When do you want to  
6 take those depositions? How much time do you need to conduct  
7 those depositions?

8           MR. WILLIAMS: Excuse me. I apologize.

9           SPECIAL MASTER: Mr. Williams?

10          MR. WILLIAMS: Steve Williams for the end payors.

11          There is one category that I should have and would  
12 like to propose adding to this for this subcategories and  
13 transactional sales data, which would be direct sales by OEMs  
14 to customers such as fleet customers. Thank you.

15          MR. HEMLOCK: Thank you, Your Honor. Our proposal  
16 would be as follows. In terms of the who, our thought would  
17 be that there would be one -- there would be one deposition  
18 for each what we will call OEM family. So, for example, my  
19 understanding is there are several -- two or three BMW  
20 entities who are recipients of subpoenas, one of them may be  
21 a manufacturing entity, one may be a sales entity, one may be  
22 a finance entity. We would be seeking one deposition of the  
23 entire family, and the members of that family could decide  
24 who would be deposed and who they want to educate on the  
25 various topics, and obviously to the extent that certain of

1 those entities house certain data or information then perhaps  
2 employees from those entities would be most appropriate but  
3 we would leave it to them, but we would expect, however, that  
4 that 30(b)(6) witness be prepared to testify on behalf of all  
5 of the entities in the family.

6 SPECIAL MASTER: And would you address -- identify  
7 yourself, sir, for the record.

8 MR. CAROME: Patrick Carome from Wilmer Hale on  
9 behalf of the Denso defendants.

10 To the extent an OEM entity is -- has a -- is  
11 substantially involved in the truck and equipment sales --  
12 manufacturing and sales, there probably needs to be a second  
13 30(b)(6) deposition for that entity because we don't think we  
14 can cover both passenger vehicles and trucks and equipment in  
15 the same deposition.

16 SPECIAL MASTER: All right. Is it your -- would  
17 you please address the issue -- I think Mr. Carome addressed  
18 truck and equipment, they want a 30(b)(6) dep of the truck  
19 and equipment. Would you please address non-core, small  
20 entities and distributors.

21 MR. HEMLOCK: Okay. So our proposal regarding the  
22 OEM families is meant to address the non-core entities, at  
23 least based on the understanding that the non-core entities  
24 are all affiliated with some core entity and thus they would  
25 be treated as one family for the deposition.

1           Our position on the smaller OEMs is that there  
2     should be no distinction. In other words, the smaller OEM  
3     family should also be subject to the same order and have  
4     those OEM families deposed for the reasons that we have laid  
5     out in the briefing. They may be smaller relative to some of  
6     the other entities but they nevertheless sell millions of  
7     cars a year, they are some of the biggest corporations in the  
8     world.

9           The plaintiffs -- the indirect plaintiffs premise  
10    some of their damages and some of their claims on purchases  
11    of those cars, so we think at least at this stage there is no  
12    reason to distinguish. That being said, we could probably  
13    during the period that we propose to conduct the depositions  
14    start with some of the larger ones and perhaps push the  
15    smaller ones towards the tail end.

16           SPECIAL MASTER: And what about distributors?

17           MR. HEMLOCK: Distributors, our understanding, and  
18    we could confirm this, is that the OEMs themselves may have  
19    the data that we would otherwise seek from the distributors,  
20    and obviously if that were the case we would have no interest  
21    in doing two different depositions. I think we would want to  
22    explore whether an OEM family could cover whichever  
23    distributor that they use, and if not then we would probably  
24    have to take a deposition of --

25           SPECIAL MASTER: My understanding, as I recall from

1 the briefs, that there are distributors for a foreign parent  
2 where there is no manufacturing operations in the United  
3 States, so the data may rest outside of the United States.  
4 In a case like that, what do you envision doing with that  
5 distributor?

6 MR. HEMLOCK: I think -- well, at a minimum we  
7 would want whatever information the distributor has. If the  
8 distributor is purchasing automobiles from a factory abroad  
9 and then reselling them in the United States, they certainly  
10 are going to have the downstream information we need. I'm  
11 assuming the distributor is either selling to another entity  
12 who then distributes them out or distributing them directly  
13 to ADPs, but in either instance they would have that sale  
14 data.

15 As to the upstream, if it is just a distributor in  
16 the United States I think it is highly unlikely that they  
17 will have information related to the purchases of parts but  
18 we can only get whatever they have.

19 SPECIAL MASTER: All right. Mr. Williams, you are  
20 chomping at the bit.

21 MR. WILLIAMS: One comment. Steve Williams on  
22 behalf of the end payors.

23 Of the smaller SCC group, as they refer to  
24 themselves, we would want to not defer Subaru of that group,  
25 the others we could, as Mr. Hemlock suggested, move back in

1 the process, but Subaru -- those entities we think should be  
2 in the front given their prominence in a number of the guilty  
3 pleas.

4 SPECIAL MASTER: I didn't hear Mr. Hemlock say he  
5 would move them to the back. Did I miss that?

6 MR. WILLIAMS: I just wanted to be clear on that.

7 SPECIAL MASTER: All right. Next, how long do  
8 you -- how much deposition time do you need?

9 MR. HEMLOCK: So we have conferred, and looking  
10 frankly at the topics and the number of subjects that need to  
11 be addressed, we think a maximum of 14 hours. Obviously as  
12 with all depositions we would endeavor to be efficient, and  
13 perhaps we won't need all 14 with all parties. Some of the  
14 families may be smaller or, as you pointed out, for a family  
15 that doesn't have purchasing operations in the United States  
16 we would likely need less time, but I think 14 hours per  
17 family would be an appropriate maximum.

18 SPECIAL MASTER: All right. When would you propose  
19 that this starts?

20 MR. HEMLOCK: Our thought, Your Honor, is that we  
21 would try to start in two weeks, two weeks from your order,  
22 and that they should be completed within 45 days.

23 SPECIAL MASTER: Okay. I think you have covered  
24 what I need to know.

25 MR. HEMLOCK: I think that's it.

1           SPECIAL MASTER: Who wants to address from the  
2           opposing parties?

3           MR. KASS: Your Honor --

4           SPECIAL MASTER: Identify yourself, Counsel.

5           MR. KASS: Colin Kass for Chrysler.

6           I don't want to address all the issues, I just want  
7           to address a few of them, and then I think others will want  
8           to address certain of the issues relating to the small SCCs,  
9           the non-core, and distributor SCC, and the truck and  
10          equipment as well.

11          A couple things. We are just hearing this proposal  
12          for the very first time so we have not yet had an  
13          opportunity, so I think what we would request is that, first,  
14          before the order gets entered, an opportunity to review the  
15          proposal, they can share with us the Word version of this  
16          proposal, and then we would commit to providing comments very  
17          quickly, and then you can take those into account.

18          There are a couple of things --

19          SPECIAL MASTER: Counsel, my general process is  
20          that I would ask one of the moving parties to draft an order,  
21          share it with you, you would then be permitted to make  
22          suggestions for revisions, alterations or deletions, and then  
23          if you are satisfied with it, it would then be signed.

24          MR. KASS: Okay. Thank you, Your Honor. One thing  
25          that we would like to -- I would like to address now is the



1 14 hours. The federal rules put in a seven-hour presumptive  
2 limit, and there has been no showing that we need to go  
3 beyond the seven hours. You know, I think we should -- that  
4 should be the presumptive limit to start with, and then if  
5 that doesn't work then we can address that later.

6 The last thing I just want to mention -- well, one  
7 other thing first on procedure. To start the depositions in  
8 two weeks, I mean, with a list that is this long and getting  
9 into the details, it is going to take a lot longer than two  
10 weeks just to figure out exactly what all the various systems  
11 are and to do our own due diligence. So if they expect this  
12 to be productive there needs to be an adequate time for us to  
13 actually dig in and provide the -- to get our 30(b)(6)  
14 deponent prepared, especially when this would be sort of a  
15 novel approach where you're effectively requiring that one  
16 spokesperson be designated on behalf of multiple entities,  
17 usually it is an entity that designates a spokesperson, so  
18 this is a departure from that and it requires multiple  
19 different investigations and coordination.

20 The last thing I just had mentioned --

21 SPECIAL MASTER: Would four weeks be sufficient?

22 MR. KASS: I think four weeks is in the right  
23 direction, Your Honor.

24 SPECIAL MASTER: All right. Thank you.

25 MR. KASS: The last thing I would like to mention

1 is this entire process, while I understand based on our  
2 session this morning that there are -- there's -- there may  
3 not be enough information on a part of the issues, which is  
4 what's available and what the burden is on our side, at least  
5 in our view of the rule is that there needs to be a  
6 substantial need that cannot otherwise be met, and the record  
7 is completely absent in terms of what the parties' submission  
8 was on what their substantial need was.

9 I mean, I don't believe that the Court would allow  
10 us to take depositions of them, but I don't want to waive the  
11 argument that at least in our view this process is only going  
12 to get at what we believe to be half of the relevant  
13 equation, and so I just wanted to note that for the record.

14 SPECIAL MASTER: Thank you. All right. Who wants  
15 to go next?

16 MR. SAVRIN: Good afternoon. Daniel Savrin from  
17 Morgan Lewis rising to speak on behalf of the domestic  
18 distributors.

19 For the record, I just want to set out that not  
20 only did we just learn about this process moments ago, but we  
21 just learned about the proposal that we sort of be pulled  
22 back in kind of backwards into this process and be pulled  
23 back into it with a very nebulous description of our  
24 families.

25 We have taken this matter very seriously on behalf

1 of my clients, three, of Jaguar Land Rover North America,  
2 Volvo Cars of North America, and the BMW group entities, and  
3 they served eight BMW group entities. At the outset when the  
4 subpoena was served in July of last year we came forward and  
5 we gave them information on our entities. It is written, in  
6 the record, there is a volume of information that we  
7 provided. We wrote letters, they didn't respond, providing  
8 them information about the nature of our companies that we  
9 represent and the background and their history. That's all  
10 attached to my declaration and my clients' declarations.

11 The other domestic distributors did the same thing.  
12 They undertook their responsibility very seriously. They had  
13 the burden to prove that we had documents and information  
14 that should be the subject of a motion to compel. They did  
15 not carry that burden. We came forward and we produced  
16 declarations that explained where documents and information  
17 are, and they replied with two paragraphs directed to us,  
18 none of which at all addressed the factual issues related to  
19 our companies, most of which are very obvious because we are  
20 consumer-facing companies and the nature of our operations  
21 are very publicly disclosed. So there is really no genuine  
22 need I think here for any further information.

23 The concept that they will go and depose various  
24 families of companies and just whatever they have they will  
25 have to give to us, we have already answered those questions.

1 For a company like Jaguar Land Rover, and obviously I'm  
2 speaking on behalf of a group but I will speak to the ones I  
3 know best, they know because it is publicly disclosed, it is  
4 on Monroney labels for heaven's sake, it is on every single  
5 car, that the cars are made in Coventry, England and the  
6 components come from Coventry, England, and if you want to  
7 know what the cost of that car is the place to go is  
8 Coventry, England. That's information we provided to them  
9 six or nine months ago. They have done nothing to my  
10 knowledge to try to get that information. There is no reason  
11 to burden a company like Jaguar Land Rover North America that  
12 sells 14,000 or 15,000 Jaguars a year and 70,000 Land Rovers  
13 with additional questions. They have answered these  
14 questions. To have to go through a 30(b)(6) and an ongoing  
15 process after that is inappropriate.

16 The same carries forward for other companies that  
17 are similarly situated, Volvo, Porsche and others, who  
18 basically have put forth in the record, the cars are made by  
19 a company outside of the United States, they don't have  
20 information on the component and assembly costs, they don't  
21 factor them into their own setting of cost. So in terms of  
22 Mr. Williams' kind of notion what they need is the full chain  
23 of information, these people can maybe put some information  
24 in the middle but without that other information the record  
25 is clear that it is divorced and not relevant, but they've

1     donated two paragraphs to try to address that point in their  
2     reply briefs. And the point there is that this information  
3     isn't like hidden, it is very obvious.

4             To the extent that there may be a question, you  
5     know, for a BMW or Mercedes has a plant physically here in  
6     the United States, you know, for BMW I have told them -- I  
7     told them going back into August and July of last year, I put  
8     it in writing, and it is in the letters in the record, and  
9     the reality is those cars that are manufactured in the United  
10    States are primarily for sale outside of the United States  
11    and they are sold to a German corporation which may allocate  
12    some of them back to the United States at a price -- so there  
13    is a whole disconnect between this organization but it is all  
14    documented in the record that is before you. And basically  
15    they are trying to come back and say we want to burden these  
16    folks who have taken their obligation seriously, put this  
17    information before the Special Master, and say effectively  
18    regardless of your de minimis size for those that -- and I  
19    don't want to take Mr. Tucker's points away, but for those  
20    who are really truly de minimis size, you know, selling  
21    70,000 Volvos in a high water-mark year or less than 50,000  
22    Porsches, this is not -- this is not the stuff they really  
23    need. They don't need to burden those companies.

24             And for the ones where the information is outside  
25    of the United States, their responsibility when they served

1 these subpoenas was to serve the OEMs if they really wanted  
2 that information. They elected not to. And frankly the  
3 burden the domestic distributors who have come forward and  
4 laid this all out at this point to say we need more  
5 information, well, I mean, maybe they feel they need more  
6 information because they don't believe what we have said or  
7 what actually is out in the public record but, you know, as I  
8 said, you go into any car lot, look at the Monroney label on  
9 these cars, figure out where they are made, and understand  
10 that they come from outside of the United States. If you  
11 want the information -- two-thirds of the information that  
12 they want relates to outside of the United States.

13           The end payor information that they want is not  
14 stuff that the domestic distributors would have, and to  
15 burden them with depositions and then the concept that after  
16 those depositions further discovery when it is pretty fairly  
17 established on the record that is before you that what they  
18 have is in the middle and they don't have any other pieces,  
19 and that information divorced from the other pieces is just  
20 one link in the chain and when they have no other parts of  
21 the chain they don't need what we have.

22           SPECIAL MASTER: What you are suggesting -- what  
23 I'm hearing is the deposition of your people is going to be  
24 very quick?

25           MR. SAVRIN: Well, in one sense it might be but in

1 the other sense the issue is now -- they have said -- they  
2 served eight BMW entities, they served a bank, they served an  
3 insurance company that all it does is resell a third-party's  
4 insurance, and I don't want to take too much away from what  
5 Mr. Ashby is going to say, and then they say, okay, bring  
6 them all together, bring in one designee for all of their  
7 records.

8 SPECIAL MASTER: I heard them say that with respect  
9 to non-core, which would be the bank?

10 MR. SAVRIN: Right.

11 SPECIAL MASTER: As long as they have got the  
12 information from a parent they are fine with that?

13 MR. SAVRIN: The parent is in Germany and they  
14 didn't do anything.

15 SPECIAL MASTER: The parent is in Germany so you  
16 don't have it. Like I said, I think the deposition is going  
17 to be relatively quick, they don't have the information.

18 MR. SAVRIN: It is a burden, it is a cost on my  
19 client when they have already put forward -- put before you  
20 in the record the answer to that, and so it is basically  
21 something in my mind kind of a burden on us for no practical  
22 purpose, and frankly I'm -- I would respond perhaps if they  
23 had invited us and let us know they wanted to include us in  
24 the mix for these depositions then we could have had a more  
25 informed discussion on that point. They basically stood up

1 at the rostrum here and announced to us for the first time as  
2 we sat here that they were pulling us backward into this.  
3 Quite frankly that isn't the way I thought it was going, and  
4 if there is a sense that there is a need for some of these  
5 and these might be productive I would say let them go forward  
6 with the 30(b)(6)s against the other entities, the entities  
7 that had been talking to them earlier today, and hold those  
8 in abeyance as to us and see whether that process works and  
9 whether any of our information after that process is done is  
10 at all necessary. I think that would be the better course  
11 here rather than to drag us into this maelstrom of  
12 depositions in a very short period of time where our clients  
13 would have to expend significant resources on counsel and  
14 other matters unless -- even if they were going to bear the  
15 cost I think it would be inequitable, but I don't hear them  
16 saying they would bear the cost.

17 SPECIAL MASTER: I heard Mr. Williams say that he  
18 would hold -- with the exception of Subaru, he would hold the  
19 small entities until the last, and it may be that he reaches  
20 a point where he's gotten enough information in the 30(b)(6)  
21 out of the main OEMs that he never gets to you. I don't  
22 know.

23 MR. SAVRIN: Right. And so I think maybe the  
24 appropriate course here is to hold those in abeyance and then  
25 after they have conducted those come back, and if we can't



1 agree to the conduct of the further ones, they come back and  
2 request you to reconsider and open us up for those  
3 depositions, but not to conduct them now.

4 SPECIAL MASTER: Thank you, Counsel.

5 MR. SAVRIN: Thank you.

6 SPECIAL MASTER: Next?

7 MR. TUCKER: Thank you, Special Master.

8 Robert Tucker with Baker Hostetler. I represent the  
9 Mitsubishi entities, but I'm here to argue on behalf of the  
10 smaller SCC opposition.

11 We are here because you believe that there is  
12 insufficient evidence before you to decide whether or not to  
13 grant or deny various portions of the motions before you, and  
14 therefore the parties want to proceed with 30(b)(6)  
15 depositions of the various entities to find out what data  
16 they have and what documents they have so that you can then  
17 make a determination.

18 But the point of the smaller SCC argument is that  
19 even if they took that deposition, they found every piece of  
20 data we have, where it is, how far back it is maintained, and  
21 then we even produced all of that data and documents, the  
22 evidence that is before the Court is that that evidence is  
23 going to be statistically insignificant to the parties.

24 The smaller SCCs each represent 2.1 percent of  
25 total sales market, and when you look at what actually

1 matters here, the vehicles that those entities would have  
2 even assembled in the United States that were then  
3 substantially sold in the United States, they are less than  
4 two percent of the entire market, and for those vehicles  
5 those entities didn't even procure all the parts for those  
6 vehicles. So what we are talking about is documents and data  
7 that does not only have huge holes in it but that is going to  
8 be statistically irrelevant to any analysis that the experts  
9 of the parties are going to conduct, and that is evidence  
10 that is before the Court, and that is evidence that has gone  
11 un rebutted by the parties.

12 It is the parties' burden here to demonstrate that  
13 they have met -- that they need documents and data from the  
14 SCCs. We have demonstrated that they don't, and that  
15 evidence that we have submitted hasn't indicated to the  
16 contrary.

17 Now, I heard three points that were made as to why  
18 they need documents from the smaller entities. One is the  
19 reasons were laid out in their brief. We don't believe they  
20 were. In fact, the motion to compel devoted one paragraph to  
21 the smaller entities. Their replies, the defendants again  
22 just one paragraph, and the end payor less than a page. They  
23 are not focusing us, they weren't in the briefs, they haven't  
24 met their burden to demonstrate a need for documents from the  
25 smaller SCCs, but not only have they not met that burden, and

1 we have put forth evidence to the Court, we have also put  
2 forth evidence that demonstrates that these -- even sitting  
3 for a 30(b)(6) deposition is going to be extremely burdensome  
4 to our clients. These topics are fairly broad and, in fact,  
5 I heard at the end of a lot of topics "and others". I'm not  
6 even sure what that means and how broad that can be  
7 interpreted, but essentially we are being asked to put forth  
8 witnesses to testify about every single part that was  
9 procured and some of these entities didn't even procure any  
10 parts. Every single sale of the vehicle downstream to the  
11 dealers and then every single sale of every vehicle  
12 downstream to the end payor when they haven't demonstrated  
13 that even if they have that information from the smaller  
14 entities it would be statistically relevant, the evidence is  
15 to the contrary.

16 The second reason is that they said we sell  
17 millions of vehicles a year. That's simply untrue. The  
18 evidence that is also before the Court demonstrates that we  
19 don't sell millions of vehicles a year. For example, my  
20 client, Mitsubishi, in 2014 sold around 76,000 vehicles, not  
21 millions. And last year they said they were some of the  
22 largest corporations in the world. Again, this is where the  
23 parties want to connect the foreign parents of the smaller  
24 distribution SCCs to be the OEMs here, but those aren't the  
25 entities they subpoenaed. They didn't subpoena Mitsubishi

1 Motor Corporation, they didn't subpoena BMW's foreign parent  
2 in Germany, they subpoenaed the domestic distribution  
3 entities here in the United States. The simple fact is that  
4 those entities are not very, very large entities. My client,  
5 for example, has one attorney in its legal department that  
6 handles all of its litigation. And in the declarations  
7 before the Court you have similar evidence from BMW, similar  
8 evidence from Porsche and Land Rover and Jaguar and Volvo and  
9 other entities that they don't have the sizable legal  
10 departments to be able to comply even with this request for a  
11 deposition.

12 SPECIAL MASTER: Counsel, I think I have had enough  
13 argument. I understand and I think I know what I'm going to  
14 do.

15 MR. TUCKER: Thank you.

16 SPECIAL MASTER: Mercedes.

17 MR. SURPRENANT: Your Honor --

18 SPECIAL MASTER: Please identify yourself.

19 MR. SURPRENANT: Dominic Surprenant, Quinn Emanuel,  
20 for the truck and equipment --

21 SPECIAL MASTER: That's right.

22 MR. SURPRENANT: And I represent seven Daimler  
23 truck entities. In our opposition, Your Honor, we pointed  
24 out, quoting from page 3, here it is impossible to determine  
25 whether the discovery that the truck and equipment direct

1 purchasers seek is, quote, proportional to the needs of the  
2 case because there is not a line in the motion or memorandum  
3 about why the truck and equipment direct purchasers need to  
4 have the discovery sought. It was ignored. There was not a  
5 line.

6 We also argued citing both an affidavit from  
7 Mr. Hayes and a Supreme Court case that heavy trucks are  
8 specially-ordered products and they are sold in a highly  
9 customized way. And the declaration that I will pull up,  
10 Your Honor, from Mr. Hayes, who is the manager of application  
11 engineering at Daimler Trucks North America, he first says in  
12 paragraph three that the definitions in the subpoena make no  
13 sense for heavy equipment manufacturers because it is highly  
14 customized, paragraph three.

15 Paragraph four, it is a short declaration so I'm  
16 going to read two paragraphs. Similarly the parties' request  
17 corresponds to a purchasing and sales process typical for  
18 passenger vehicles but not for the highly customized process  
19 used by the Daimler truck entities. Unlike passenger  
20 vehicles, Daimler's trucks are built according to  
21 specifications designed on a case-by-case basis in close  
22 collaboration with each particular dealer and customer. Over  
23 the past year truck sales orders have been generated from two  
24 to six vehicles on average, and those orders include custom  
25 requirements. The most basic negotiations will require the

1 customer to select dozens of distinct option codes at the  
2 highest level of customization. There are hundreds of  
3 customer-selectable options for each vehicle. On the most  
4 popular highway truck track model there are over 500 possible  
5 configurations for just cylinder fuel tanks, for just the  
6 fuel tanks.

7 And here is the most important paragraph. As each  
8 truck is customized to the particular needs of the customer,  
9 manufacturing costs of different trucks can vary by tens of  
10 thousands of dollars. The prices charged to customers are  
11 also individually negotiated and depend on a number of  
12 customer-specific factors. Given that they would have been  
13 intimately involved in the design and the specification as  
14 well as negotiations of the price of each truck, they likely  
15 already have what information is relevant.

16 And so what we said is is the subpoena, which is  
17 designed for automotive vehicles, makes little, if any, sense  
18 when applied to heavy truck manufacturers, and there was not  
19 a line -- not a line in -- they didn't carry their burden  
20 whatsoever. They don't dispute in their reply that there was  
21 not a line in the moving papers why the information sought  
22 from the truck and equipment subpoenaed parties was relevant,  
23 why they needed it. They can't possibly show its  
24 proportionate needs of the case without a line of support,  
25 and we called them on it in our opposition.

1           So what they say in their reply, Your Honor, is  
2 really astonishing. They don't respond to Mr. Hayes'  
3 declaration, they ignore it. What they say is the truck and  
4 equipment respondents also assert that the motion must be  
5 denied because there is not a line in the motion to compel  
6 describing why the subpoenaed information is relevant  
7 specifically to the truck and equipment direct purchaser  
8 claims.

9           They then say, however -- this is their entire  
10 discussion, Mr. Special Master. However, the subpoenaed  
11 documents and data are relevant to the truck and equipment  
12 direct purchasers' claims for the same reasons they are  
13 relevant to substantially similar claims raised by other  
14 plaintiffs' classes, reasons that have been described at  
15 length in the motion to compel.

16           That's no answer at all. We called them on it.  
17 This is very, very different.

18           SPECIAL MASTER: Counsel, let me just interrupt you  
19 at this point because the issue that is currently before me  
20 now is no longer the motion to compel and the opposition to  
21 the motion.

22           MR. SURPRENANT: Okay.

23           SPECIAL MASTER: The only issue before me now,  
24 because I have dictated it, is go out, moving parties, and  
25 explore from the opposing parties what data is available to

1       them that is readily accessible, that is relevant and that is  
2       not burdensome. You have been arguing the substance of the  
3       opposition to the motion to compel. All I am doing is I'm  
4       working on creating a discovery program on discovery. All  
5       right. That's -- so I understand your argument on the  
6       substance of the opposition. I'm not getting to it, I'm not  
7       going to address that.

8               MR. SURPRENANT: Respectfully, Special Master, you  
9       are. You are proposing to order my seven Daimler truck  
10      entities to incur substantial burden preparing one witness to  
11      describe what data exists for seven companies when the  
12      plaintiffs -- when the issuing parties have totally failed,  
13      totally failed, not a line, there is not a line explaining  
14      why they get any discovery from the truck entities I  
15      represent. There must be some showing by the issuing parties  
16      that there is some relevance to this. This would be a  
17      substantial burden, Your Honor, and at the very minimum -- I  
18      mean, I just think it should be denied. I understand your  
19      Special Master's point, I understand it, and I think it might  
20      be relevant for some of the other entities, but not for the  
21      truck entities.

22               There has been a wholesale complete absence by the  
23      issuing parties to justify any discovery whatsoever, so it is  
24      not as if they say well, we justified discovery but we  
25      haven't provided the Special Master with sufficient



1 information to where he can intelligently draw the line and  
2 so we are going to get some more information. I understand  
3 that, that may be a sensible path forward but not for the  
4 truck and equipment entities where they have completely  
5 failed to say a single word why they need discovery from us.  
6 This will not be simple, it will not be inexpensive, it will  
7 be cumbersome, and they have to do something. I mean, it has  
8 just been a complete failure to justify any discovery.

9 SPECIAL MASTER: Thank you, Counsel. I appreciate  
10 your argument.

11 MR. SURPRENANT: Thank you.

12 SPECIAL MASTER: All right. Sir, your name and who  
13 you represent.

14 MR. ASHBY: Joseph Ashby of Quinn, Emanuel,  
15 Urquhart & Sullivan. I represent Hyundai AutoEver America  
16 and Hyundai Motor America. I'm rising to speak on behalf of  
17 the non-core entities.

18 SPECIAL MASTER: I don't need to hear your  
19 argument, Counsel. I know what I'm going to do. All right.  
20 Thank you.

21 MR. ASHBY: Okay.

22 MS. SESSIONS: Mr. Special Master, Justina Sessions  
23 of Keker & Van Nest on behalf of the Honda entities.

24 On behalf of the larger OEMs that were in the  
25 discussion with you this morning, this is the first that we

1 have heard of this proposal, this is the first chance we are  
2 getting to digest these proposed deposition topics which I  
3 think as I have heard them are not limited to the  
4 availability of data but go into a lot of other substantive  
5 issues, but I would propose that as a way to start this  
6 process perhaps that we could begin the depositions as  
7 depositions on written questions because as the topics have  
8 been laid out right now Honda would need to prepare at least  
9 three witnesses, the three people from whom we submitted  
10 declarations in the record on the motion to compel, so it is  
11 not just a simple matter of putting up one person, so we are  
12 talking at least three depositions, and I think that doing  
13 this on written questions initially would also alleviate the  
14 need to have 7- or even 14-hour depositions in a lot of these  
15 cases if these are simple questions of what data do you have,  
16 you know, where is it kept, how far back does it go. We  
17 could much more easily answer those in writing under oath,  
18 which we could do, rather than doing this in a lengthy  
19 deposition process live that would be far more burdensome to  
20 the OEMs.

21 SPECIAL MASTER: Thank you. All right. I have had  
22 enough. I know what I'm going to do.

23 Let me preface by stating as I said in my  
24 individual meeting with all of the counsel this morning, I  
25 have been advised and I believe it to be accurate that this

1 is the largest case currently pending in the United States,  
2 and this subpoena is probably the largest subpoena that has  
3 ever been requested to be enforced anywhere in the United  
4 States. The reason it is so broad is because the case is so  
5 big. And as a consequence we have to engage in whatever  
6 measures are appropriate to accelerate the production of  
7 information to make sure we stay within our schedule, to do  
8 what is necessary to keep this case moving forward, and as to  
9 the parties that spoke in opposition I do apologize because  
10 we were moving along a track to try to negotiate something  
11 and in my estimation we simply ran out of time, we could have  
12 been here another full day and we don't have another day to  
13 give.

14 It is my decision to convert this into an order,  
15 and as I said, I'm going to give you an opportunity to take a  
16 look at what the order is and work with the moving parties to  
17 come up with something that reflects what I'm about to order  
18 and work in perhaps some of your concerns that the moving  
19 parties will accept.

20 So that being the case I'm going accept the  
21 proposal by the moving parties to take 30(b)(6) depositions.  
22 I'm going to accept the fields of inquiry that were presented  
23 by the moving parties. I ask that the moving parties  
24 immediately e-mail those fields of inquiry to all counsel in  
25 this case so they can get a leg up on what they are going to

1 be looking for. I'm going to cap the deposition time to  
2 12 hours. At this point I'm going to carve out or hold in  
3 abeyance the small entities, the distributors, and the  
4 non-core. I'm keeping truck and equipment in. I just feel  
5 that this is only an inquiry into what data is available.

6 It is not a question of -- I'm not making a ruling  
7 on whether this subpoena will ever be enforced as to truck  
8 and equipment because they may be correct, it is so  
9 individualized a transaction that it is inappropriate to put  
10 them in this class.

11 On the other hand, I'm only asking that the parties  
12 be allotted an opportunity to discover what information is  
13 readily discoverable, how it is maintained, how easily  
14 accessible it is so that they can make some good-faith  
15 negotiations to whittle down the largest subpoena that has  
16 ever been issued and perhaps alleviate some of the concerns  
17 that have been raised by the OEMs that have to comply with  
18 this subpoena.

19 With respect to the people that I have carved out,  
20 you are not off the hook, you will be coming back. There is  
21 going to be clearly another motion on this matter after the  
22 30(b)(6) depositions are concluded and the parties will  
23 naturally reach an impasse on what discovery can and cannot  
24 be produced. You are going to be back, and at that time I  
25 will address the entities that I have carved out. I will

1 also entertain the truck and equipment manufacturers' motion  
2 at that point to be carved out as well.

3 I believe that the request of four weeks to get the  
4 witnesses prepared is reasonable. And I think 45 days is  
5 also a reasonable period of time within which to complete  
6 these depositions.

7 I am sure with the caliber of counsel in this room  
8 if you need another ten days there should be no problem in  
9 getting an extension from opposing counsel to get these done  
10 in 55 days instead of 45.

11 I would ask that somebody on the moving side  
12 prepare an order to that effect, that it be given to the  
13 opposing counsel for their review and their input, and that  
14 if they can agree, that it be submitted to me for entry. If  
15 they cannot agree then I would ask that you give me the order  
16 and that the opposing parties give me a red-lined proposition  
17 where they set forth their arguments for or against an  
18 addition or deletions, and I will finalize what I think the  
19 most appropriate order at that time. Please recall you have  
20 to include the stipulation that this order will be subject to  
21 appeal before Judge Battani pursuant to the order appointing  
22 me Special Master in August of 19 -- it feels like 19 -- of  
23 2014. I feel like it is 19 something. All right. Are we  
24 clear on that?

25 MR. WILLIAMS: We are mostly clear. One question,

1 Your Honor. As to the small --

2 SPECIAL MASTER: Wait, wait, I want Subaru in.

3 MR. WILLIAMS: Thank you.

4 SPECIAL MASTER: I'm sorry. It is in my notes and  
5 I didn't hit it.

6 MR. HEMLOCK: Thank you very much, Your Honor.  
7 Just two quick things. One, we will prepare a draft of the  
8 order, we will get that around as soon as possible. Two, if  
9 we could just ask that you order expedited briefing on any  
10 objection from the OEMs that would be obviously helpful.

11 SPECIAL MASTER: What is the normal -- so let's  
12 assume that we get an order a week from today, it is entered,  
13 what would be the normal objection period?

14 MR. CAROME: Normally it would be 21 days.

15 SPECIAL MASTER: What are you proposing?

16 MR. CAROME: Ten days.

17 MR. KASS: We would like at least 14, Your Honor.

18 SPECIAL MASTER: All right. 14 days is fine.

19 Mr. Williams, is that indigestion you are  
20 suffering?

21 MR. WILLIAMS: Figuratively only because we  
22 appreciate the rulings, our time is very constrained for the  
23 auto dealers and the end payors.

24 SPECIAL MASTER: It is four days, it is four days I  
25 have given them. Thank you, sir.

1 Yes, ma'am? Please identify yourself.

2 MS. KINGSLEY: Your Honor, Meredith Kingsley on  
3 behalf of Hatci, KMMG and HMMA.

4 With respect to the one deponent who will be  
5 speaking on behalf of this OEM family, will they be required  
6 to speak on behalf of members of the family who you have said  
7 are now held in abeyance?

8 SPECIAL MASTER: No. If we are talking non-core  
9 entities, no, they will not be required to speak on behalf of  
10 non-core entities.

11 MS. KINGSLEY: And domestic distributors and  
12 small --

13 SPECIAL MASTER: And domestic distributors and  
14 small entities, that's right.

15 MS. KINGSLEY: So they are only required to speak  
16 on behalf of one or a part of the family, not the entire  
17 family?

18 SPECIAL MASTER: That's correct.

19 MS. KINGSLEY: Okay.

20 SPECIAL MASTER: That's correct. Make sure that's  
21 in the order, please, that they are carved out.

22 MR. CHERRY: Your Honor, can I speak to that?

23 I don't think we anticipated one person. I mean,  
24 they may need an upstream person, a downstream person. They  
25 should bring whoever is necessary to address the topic.

1           SPECIAL MASTER: I understand that. I assume that  
2 given the nature of her client one person may suffice in her  
3 case, but you are correct, when you go through the list of  
4 topics you may need an upstream person and a downstream  
5 person, you may need a salesperson, you may need a procuring  
6 person, you may need somebody in finance or accounting.

7           MR. CHERRY: Yes. And the same with respect to a  
8 corporate family, if there is an entity that does the  
9 procurement at a manufacturing level, there is an entity that  
10 does the sales at a different level, they should bring people  
11 who can address that for the corporate family.

12           SPECIAL MASTER: Understood.

13           MR. CHERRY: Yes.

14           SPECIAL MASTER: That would be my intentions.

15           MR. CHERRY: Thank you.

16           SPECIAL MASTER: Yes, ma'am?

17           MS. SESSIONS: I'm sorry. Just to clarify, the  
18 time limits, does that apply per family or does that apply  
19 per witness, and then with the idea of bringing --

20           SPECIAL MASTER: It is per witness.

21           MS. SESSIONS: It is per witness?

22           SPECIAL MASTER: Per witness, correct.

23           MS. SESSIONS: Okay. So if Honda has to put up  
24 three --

25           SPECIAL MASTER: They get 36 hours.



1 MS. SESSIONS: Okay.

2 SPECIAL MASTER: They get not more than 36 but not  
3 more than 12 per witness, so if they take three they only  
4 have 24 on the other two.

5 MS. SESSIONS: Okay. Understood. Thank you.

6 SPECIAL MASTER: Mr. Williams?

7 MR. WILLIAMS: I am going to make two comments.  
8 One, certainly I can speak for all of us, we will use as  
9 little time as we can with these witnesses.

10 My next topic is on a different issue, which is if  
11 we are done with the depositions one aspect of this motion  
12 that we think could be resolved because it doesn't relate to  
13 any of this is the Department of Justice productions, and we  
14 would ask that be ordered.

15 SPECIAL MASTER: Yes. Mr. Williams, one of us is  
16 having a senior moment because as I recall you stood up here  
17 about an hour ago and argued the Department of Justice  
18 production with the counsel for General Motors, and I ordered  
19 it.

20 MR. WILLIAMS: Correct, as to General Motors. I  
21 just want to be certain as to any of the others --

22 SPECIAL MASTER: It is as to all of the OEMs, they  
23 have to produce their DOJ information with the caveats that  
24 we discussed in your order.

25 MR. WILLIAMS: Thank you very much.

1           MR. KASS: Your Honor, I just would like to address  
2 the last -- not the DOJ but the time limit issue. I think  
3 that, you know, they need a set amount of information to  
4 understand the systems. The number of people we need to put  
5 up really shouldn't change the total amount of time they need  
6 to examine the witnesses, and it really does impact the  
7 number of witnesses that frankly you are willing to put up if  
8 you know each one is going to be subject to 12 hours. We  
9 would suggest there should be a cap. It can be 12 -- you can  
10 have 12 hours per witness but there needs a cap per OEM  
11 family at least we believe, and we think that cap should be  
12 not more than 14 hours. There is no reason why they can't go  
13 through all of the -- through all of the -- whatever  
14 witnesses need to be put up and ask the questions that relate  
15 to their area.

16           SPECIAL MASTER: Can you understand, however, the  
17 nature of the inquiry is such that with respect to Daimler  
18 they would need somebody in the procurement area, they would  
19 need somebody in the sales area, they would probably need  
20 somebody in the pricing area, whether that's in accounting or  
21 finance, whatever, they would need at least three different  
22 individuals to address these topics.

23           MR. KASS: I would expect them to need two, maybe  
24 three, people. I think when you asked originally how long --  
25 you asked the parties how long they would need, they said

1 14 hours and that was with the concept they would address the  
2 five areas that they needed to cover and they believed they  
3 could cover those five areas in that amount of time. So if  
4 you want to give them a little bit extra, but to give them  
5 12 hours to cover each one of those areas I think is  
6 excessive.

7 SPECIAL MASTER: Mr. Williams, your thoughts?

8 MR. WILLIAMS: Your Honor, I think on behalf of all  
9 the moving parties we would agree to 14 hours for all of the  
10 topics we are talking about today, and if there is any  
11 instance where we think there might be a need for more when  
12 we talk --

13 SPECIAL MASTER: So if there's three witnesses you  
14 are dividing the 14 hours among the three?

15 MR. WILLIAMS: We will divide the 14 hours and if  
16 for any reason that's not sufficient then we will try to work  
17 it out and bring it to you if we cannot.

18 SPECIAL MASTER: Counsel, is that acceptable?

19 MR. KASS: That is, Your Honor.

20 SPECIAL MASTER: We will revise the order that way.  
21 Anything else? It has been a long -- oops. Mr. Martini is  
22 calling me.

23 MR. FENSKE: Me too, Your Honor. Dan Fenske from  
24 Mitsubishi Electric. Just one housekeeping matter.

25 I understand Your Honor is not entertaining

1 argument on the settlement privilege issue. I just wanted to  
2 understand, was your Your Honor planning to issue some sort  
3 of ruling on that separately or --

4 SPECIAL MASTER: No. What is going to happen is  
5 the reason I declined to address that is because it has been  
6 my experience that ruling on it could have a cascading effect  
7 on future negotiations. It is my hope that when the moving  
8 parties find out what is available in the system of the OEMs  
9 that negotiations will begin in a professional manner, and my  
10 hope is that the negotiations will go beyond not just the  
11 data that is available but let's start talking about the  
12 settlement privilege issue, let's start talking about the  
13 attorney-client privilege issue. I'm not going to rule on it  
14 today because I want to encourage negotiations that are going  
15 to occur in approximately 60 days or 75 days to be full and  
16 robust, and that's why I'm deferring it. I specifically am  
17 not ruling on it. I'm not ruling on the motion to compel.

18 MR. FENSKE: Understood. Thank you, Your Honor.

19 SPECIAL MASTER: Are we done? I want to thank you  
20 all, it has been a long day, but you have been very  
21 professional and I appreciate the way you have dealt with me.  
22 Thank you.

23 (Proceedings concluded at 4:42 p.m.)

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*CERTIFICATION*

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of Automotive Parts Antitrust Litigation, Case No. 12-2311, on Thursday, March 24, 2016.

s/Robert L. Smith

Robert L. Smith, RPR, CSR 5098  
Federal Official Court Reporter  
United States District Court  
Eastern District of Michigan

Date: 03/25/2016

Detroit, Michigan